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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,118	06/26/2003	Chris Richburg	84,568	1031
7	590 11/02/2005	EXAMINER		
COASTAL S	YSTEMS STATION	LOUIS JACQUES, JACQUES H		
DAHLGREN DIVISION			ART UNIT	PAPER NUMBER
NAVAL SURFACE WARFARE CENTER			AKTONII	FAFER NUMBER
6703 W HWY	98 CODE CP2L	3661		
PANAMA CIT	Y, FL 32407-7001			_

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ③ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Edmains of time may be valided under the proteins of 37 CFR 1.73(a). In no event, however, may a reply be timely filled after 50 K (9) MONTHS from the mailing date of this communication of 37 CFR 1.73(a). In no event, however, may a reply be timely filled after 50 K (9) MONTHS from the mailing date of this communication of the control of the proteins of the communication of the proteins of the		Application No.	Applicant(s)				
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The MAILING DATE of this communication appears on the cover sheet with the correspondence address → Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extension of time map be available under the provision of 3CPR 1.13(a). In no event, however, may a reply be timely filed after SX (to MoNTHS from the maining date of this communication. **Extension of time map be available under the provision of 3CPR 1.13(a). In no event, however, may a reply be timely filed after the major of the maining date of this communication. **Extension of temply is specified above, the maximum studiety partied villa gray within the stabilizary minimum of thirty (30) days will be considered timely. **FORDER of the ply is specified above, the maximum studiety partied village, may reduce a by extended plant for reply will, by shafting, cause the application, ease in a septiation become ABANDONED (35 U.S.C. § 130). **Status** 1) □ Responsive to communication(s) filed on **OT September 2005.** 2a) □ This action is FINAL. 2b) □ This action is non-final. 3) □ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213. **Disposition of Claims** 4) □ Claim(s) **	Office Action Summary	Examiner	Art Unit				
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Application/Control Number: 10/608,118

Art Unit: 3661

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/609,902. Although the conflicting claims are not identical, they are not patentably distinct from each other because the guidance transmitter and guidance receiver of the abovementioned copending application are not needed to carry out the claimed invention of the present application. It is well settled that the omission of an element, and its function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ 184 (CCPA 1963). Also note Ex parte Rainu, 168 USPQ 375 (Bd. App. 1969). Omission of a reference element of step whose function is not needed would be obvious to one of ordinary skill in the art.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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3. Claims 1-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,957,132 (issued from Application Serial No. 10/609,901). Although the conflicting claims are not identical, they are not patentably distinct from each other because the database and the calibration waveforms recites in the claims of the abovementioned copending application are not needed to carry out the claimed invention of the present application. It is well settled that the omission of an element, and its function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ 184 (CCPA 1963). Also note Ex parte Rainu, 168 USPQ 375 (Bd. App. 1969). Omission of a reference element of step whose function is not needed would be obvious to one of ordinary skill in the art.

Terminal Disclaimer

4. An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a). See 37 CFR 1.321(b) and/or (c).

The person signing the terminal disclaimers is not authorized to sign.

5. It would be acceptable for a person, other than a recognized officer, to sign a terminal disclaimer, <u>provided</u> the record for the application includes a statement that the person is empowered to sign terminal disclaimers and/or act on behalf of the organization.

Accordingly, a new terminal disclaimer which includes the above empowerment statement will be considered to be signed by an appropriate official of the assignee. A separately

filed paper referencing the previously filed terminal disclaimer and containing a proper

empowerment statement would also be acceptable.

Response to Amendments & Arguments

. 6. The amendments along with the arguments filed therewith on September 7, 2005 have

been entered and carefully considered by the examiner.

The prior art rejections applied against the claims have been withdrawn.

The obviousness-type double patenting rejections are maintained because the terminal

disclaimers have not been approved. The person signing the terminal disclaimers is not

authorized to sign.

Accordingly, this office action is made final.

Conclusion

7. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Jacques H. Louis-Jacques whose telephone number is 571-272-

6962. The examiner can normally be reached on M-Th 5:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Thomas Black can be reached on 571-272-6956. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 571-272-3600 (toll-free).

Jacques H Louis-Jacques

Primary Examiner

Art Unit 3661

/jlj